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## The Practice of Immigration and Nationality Law: Setting Boundaries of Specialization at the Margins

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### Abstract

Drawing on literature on professions and specialization, both within the legal profession and outside of it – in disciplines such as medicine, teaching, and scientific research – this paper looks at immigration and nationality law practice as a specialist area established through boundary setting in England. It analyses the boundaries placed on knowledge and authorised practice of law by examining how these lead to new specializations. Situated at the margins of legal practice, immigration law represents a low status area of practice which is not just influenced by market forces. Driven by external factors and internal motivations, the process of specialization operates to create niche areas of knowledge and expertise within immigration law. We find that the process of specialization can have contradictory effects: both consolidating professional values as well as leading potentially to de-professionalization.

### Key words

Legal profession; specialisation; immigration; nationality; citizenship

### Resumen

Aprovechando la literatura existente sobre profesiones y especialización tanto en la profesión jurídica como fuera de ella, este artículo aborda la práctica jurídica sobre inmigración y nacionalidad como un área de especialización que se ha establecido sobre la fijación de fronteras en Inglaterra. Analiza los límites fijados al conocimiento y la práctica jurídica autorizada a través de un análisis de cómo esas fronteras provocaron el surgimiento de especializaciones nuevas. En el margen de la práctica

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jurídica, el derecho migratorio representa un área de bajo nivel en la práctica, área que no se ve influida por las fuerzas del mercado. El proceso de especialización está dirigido por factores externos y motivaciones internas, y opera para crear nichos de conocimiento y especialización dentro del derecho migratorio. Hemos descubierto que el proceso de especialización puede tener efectos contradictorios, puesto que puede consolidar valores profesionales a la vez que, potencialmente, conducir a la desprofesionalización.

**Palabras clave**

Profesión jurídica; especialización; inmigración; nacionalidad; ciudadanía

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## 1. Introduction

This paper examines how new specializations are created in law through the setting of boundaries around areas of knowledge and authorized practice. It looks at processes of professionalization and specialization through interviews with immigration and nationality lawyers (both barristers and solicitors) in England as well as with clients who access legal services. From this data, we explore how spaces of legal practice are constructed, occupied and reserved by specialists. We find that a core group of lawyers are acknowledged by their peers as the leading experts in the field of immigration and nationality practice; some of them also specifically self-identify as nationality law experts. This finding of concentration of expertise raises questions about specialization in general, how specializations emerge, and their implications for the profession, the clients, and the wider public interest. To search for answers, we examine if immigration law practice is a specialist area in England and then we locate nationality law practice within the general field of immigration law. We also explore the likely implications of specialization on the various stakeholders: the profession, the professionals, and the clients.

We find that immigration law is an area of law that has acquired some distinctive attributes of specialization. Within it, nationality law occupies a status akin to a sub-specialization but lacks some of the more generally recognizable features of specialization identified in the literature on professions. It is likely that with a rise in work in this sub-field (as is currently being experienced by immigration practitioners following the Brexit referendum) there will be a corresponding rise in the number of lawyers in this area. At that point, nationality law may emerge as a distinct specialization.

Our data is gathered from two related projects on citizenship. The first is an Economic and Social Research (ESRC) funded Citizenship Project at the University of Bristol Law School which looks at the differential processes of inclusion and exclusion through the gatekeeping functions of British citizenship.<sup>1</sup> The second is a project on the perceptions of law of applicants who use legal procedures to acquire citizenship (Pathways to Citizenship project, funded by the University of Bristol, PI Prabhat). We have conducted 25 in-depth interviews (15 with legal practitioners and ten with applicants), carried out participant observations in two law centres, and organized a workshop in a focus group format with multiple stakeholders.<sup>2</sup> Some of our participants were direct service providers while others worked in policy and law reform. We seek to contribute to literature on specialization in professions through the analysis of this data.

We recognize that immigration work can be high-end corporate work or low-end work undertaken for precariously situated clients. In fact, some of our interviewees are located in corporate firms, but in this paper, we turn the gaze away from the corporate immigration lawyers, to focus instead on a much lower status bar: the general immigration bar which serves mostly individuals rather than firms. We do so strategically, as earlier studies of specialization have tended to focus on the corporate bar and the effects of specialization on market control (higher incomes for a new elite) or professional service (enhanced ability to serve elite clients) (for example, Reed 1974, Laumann and Heinz 1977, Spiegel 1979, Heinz and Laumann 1982, Garicano and Hubbard 2003, 2004, Rostain 2004). Very few studies look at how specialization impacts those who are non-elites, both in the profession and in the clientele. We seek to fill this gap and test some of the existing theories on specialization which have emerged from the research on the corporate bar.

We draw on the processes of specialization documented in studies of both the legal profession, and of professions in general (medicine, teaching, and scientific research), to elaborate on how specialization operates to create niche areas of

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<sup>1</sup> ESRC Grant ES/L010356/1.

<sup>2</sup> In order to fulfil the conditions of anonymity promised to our interviewees, all interviewees are unnamed.

knowledge and expertise within immigration law practice. We construct our argument about specialization of immigration and nationality law practice in a step-wise manner. First, we lay out the general features and patterns of specialization. Second, we analyse the field of immigration law practice as a specific example of specialization. Third, we look at nationality law practice from the analytical lens of specialization. Finally, we conclude with some reflections on why specialization at the margins matters for practitioners themselves and for clients who require affordable but high quality legal services.

## 2. Professions and Specialization: A Special Relationship

### 2.1 Special Features of Professions

In the 1950s and 1960s, empirical studies of professions and work turned to the development of professions, and their distinctive features as differentiated from other occupations (Greenwood 1957, Döhler 1993). Work on the constitutive properties of professions continues to this day. Law and Kim suggest: "(...) professionals acquire more advanced levels of training and education, earn higher wages, and generally possess greater status in society. In addition, unlike most occupations, entry into and standards of practice within professional occupations are regulated by professional societies and by government" (Law and Kim 2004, p. 3). The literature on professions and specialization in different fields presents some common themes such as how professions negotiate their autonomy as against state and market (Adler 2008 *et al.* p. 359). Primarily, autonomy is achieved through regulation of the profession by the profession itself. This kind of internal or self-regulation depends on recourse to higher professional values, to which the profession as a whole agrees to subscribe, as well as enforce on its members. Abbott (1983, p. 868) argues that professions generally have internal controls in place (such as, for example, in law standardizing entry through bar examinations, regulating behaviour through ethics, and imposing other informal controls) in order to effectively deliver the goods promised by the profession (Abbott 1983, p. 868).

How does the project of professionalism relate to specialization? There appears to be a temporal connection between the two as specialization generally appears at the later stages of professionalization. Nonetheless, professionalization – as the process of reserving and refining areas of work – may itself be described as a form of specialization. In this article we use specialization to refer to a later stage of professionalization (White 2000). Once it appears, it may consolidate professionalization or weaken it; there is no consensus on this point on literature on organizations or professions (for instance, Joiner 1955). The stages of specialization follow a certain trajectory, as outlined in the context of the medical profession by White (2000). White examines the history of alcoholism treatment and marks out three trends in addiction treatment settings. The first of these trends – professionalization – is the establishment of training programmes for those working in alcoholism and drug abuse treatment programmes. The second trend is the development of professional associations and accreditation processes for addiction counsellors. As the field becomes professionalized, a third trend – specialization – emerges. Counsellors could not only acquire professional credentials, they could also specialize in work in particular settings (hospitals, schools, military, workplace, criminal justice system, or child welfare system). They could specialize in working with clients with particular drug choices. And, they could specialize in work with particular types of clients (for example women, adolescents, the elderly, clients of colour, LGBTQ, the deaf, the dually diagnosed, and other special needs groups). These three stages are conceived here as steps of professionalization (through setting up of training and institutionalization) and specialization (through greater availability of choices for practice settings and clientele). They demonstrate the increasing construction of boundaries around areas of work in the alcohol and drug addiction treatment domain, which eventually led to specialized treatment. Similar boundary

setting is observable in other fields, such as law, in which specializations emerge (for example, Oliver and Montgomery 2005).

### 3. Professionalization and Specialization: Some Contradictions

We will explore in detail in this article why specialization takes place, and the implications of specialization, but here we introduce the contradictory relationship between professionalization and specialization. Professions create monopolies over knowledge which benefit a select few professional insiders. Specialization is also often approached in professional and organizational literature as a question of market economy because it creates further monopolies over knowledge. However, the relationship between professionalization and specialization literature is a complex one, contingent on situations and contexts.

Professions generally announce undivided *oneness*; they are characterized by their unity. Their structure of self-regulation embraces all within the *self*. A profession is thus an encompassing structure, which is likely to be threatened if special interests burgeon within it and demand specific attention and resources. Yet, taking the legal profession as an example, we see how specialization affords differing levels of professional prestige. Two theories compete to explain the distribution of esteem among lawyers (Sandefur 2001). One is the client-type thesis which holds that that lawyers most esteem work for clients who enjoy the highest regard in society (Laumann and Heinz 1977, Heinz and Laumann 1982). This thesis indicates that external values completely permeate the profession. The second, the professional purity thesis, however holds that lawyers have a distinct value system from external values. In fact, lawyers' regard for an area of legal practice reflects the degree to which its practitioners are able to exclude nonprofessional tasks from their work (Abbott 1981, 1988). It is only because different kinds of clients require tasks that are more or less professional that clients' characteristics have any relationship to prestige. For example, representing successful businesses or, at the other extreme, engagement in *pro bono* work for those affected in humanitarian crises, are examples of specialization attracting particular prestige within the legal profession. Indeed, here it may be considered a duty to provide services when there is an "ominous gap between the services dispensed by the legal profession and equal justice" (Auerbach 1976, p. 13). Diverse motivations drive individuals to this work, but these services are greatly appreciated by legal professional organizations and institutions, as these raise the profile of the profession *as a whole*. An example of this dynamic is the conferment of awards by the American Bar Association on legal representatives of Guantanamo Bay detainees (Prabhat 2016).

Other kinds of low profile work, however, do not attract such accolades and are about the mundane; the everyday pressures of representing poor clients in difficulties. Securing adequate housing for families in need, for instance, will never attract great attention from the wider profession or general public, but is immensely important for the people affected by housing shortages. The variety of attitudes to legal specializations can therefore reify stratifications within the profession and render at least some professionals marginal to the professional project of values and services.

### 4. Boundary Setting

We use professionalization and specialization as examples of boundary setting in this paper in a similar manner as Gunz and Peiperl (2007). They write: "Boundaries are not something that can be touched or seen; rather, boundaries are constructed through the thoughts and actions of people. Subjective boundaries are the perceptions a person carries in his or her head about the barriers that limit mobility of individuals. A codified boundary appears when a critical mass of people – that is, enough people who are in a position such that they can impose their views about the boundary on most other people – agree that it exists" (Gunz and Peiperl 2007, p. 481). The notion of *professions* originally emerged as a demarcation problem— i.e.,

a problem of boundaries—between “special” and ordinary occupations (Gieryn 1983). Parker, in the dissertation *Careers in a changing landscape: Specialist behavior and lateral mobility within the legal profession*, submitted to the Department of Sociology, Stanford University, in September 2010 writes (p. 16), “The ability to control a boundary is not absolute but is dependent on the relative strengths of the different parties involved”. Parker draws on Abbott (1988) to highlight how boundaries around professions are often based upon a certain area of specialist knowledge or skill. There is competition to set up jurisdiction over that knowledge. Yet, there is a general understanding that professions have a project and a vision (i.e., a professional project), which their members share in common. Both professionalization and specialization share the boundary-setting function; both have properties of inclusion of some and exclusion of others. When Abbott (1983) develops his idea of jurisdictional conflict theory he is describing work at the boundaries. But he shifts the analytical focus from associations and institutions in to the contents of professional life. He highlights that the struggle of professionals is not just against outsiders; intra-professional struggles also exist (Lamont and Molnár 2002). Thus, in immigration law practice we see while some people may act as subsidiary practitioners (termed “paraprofessionals” in the professionalism literature) – authorized to engage in specific zones of legal advice - they cannot generally engage in mainstream practice. They are at the boundaries of the practice; present inside but still quasi-outsiders.

Specialization generally ensures a higher *rent* for those who are within the mainstream profession, often justified in the name of quality control. Some lawyers become more likely to have repeat clients of a particular kind, whether through acquiring formal credentials or informal word of mouth. This directs workflow away from others situated within the legal profession. While some refer specific work to a set of colleagues and streamline their own work, others try to acquire new skills through training or re-training to enter the new specialist area, or engage in lobbying (formally or informally) for such work. New boundaries and values are established to draw lines between specialists and their fellow lawyers. Thus, Pettigrew (1973, p. 257), while studying specialists, observes that “the concern is with how a specialist group defines its task, how it protects its identity by the development of a system of values and generally how it links itself with the activities of interdependent specialties”. Boundaries are present not just in knowledge areas but also in access to services. Once legal practice areas become sharply demarcated, and non-specialists are side-lined, access to certain services becomes difficult. For example, our research has found that as specialists have emerged in particular areas of immigration or nationality law, not only have their services become highly sought after (thus placing high demand on a small number of practitioners), but also they become seen as owners of particular tranches of knowledge, which are then rendered less accessible to non-specialists. For immigration lawyers, how they demarcate and/or blur the boundaries between immigration and other practice areas, as well as within immigration law, is a crucial issue.

## 5. Specialization at the Margins of the Profession

We now turn to the question of what normally drives specialization. There is a divergence of views such as functional needs or market demands. In Durkheim’s (1997/1893) work, for instance, specialization is a response to functional needs; as work becomes more complex, divisions and sub-divisions arise. In professions, there already exists a claim of greater expertise of professionals, as against laypersons, in their understanding of problems and their ability to solve these. Specialization may then appear within professions on the basis of competing intra-professional claims to further consolidate boundaries.

Some scholars focus instead on market demands, looking at the economic rationale driving behaviour of specialization. The 1970s saw many such studies on the market control strategies of professionals (Berlant 1975, Larson 1977). Parker notes, in



theory, a completely open labour market has no boundaries. Market mechanisms should distribute labour as per demand and supply. But the decision to create a boundary is often due to the need to exclude others from entering a particular market. This logic also operates within professions to maintain separate territories for specialists in times of increased competition (Weeden 2002). In order to illustrate how this operates Parker, in the dissertation thesis entitled *Careers in a changing landscape: Specialist behavior and lateral mobility within the legal profession*, submitted to the Department of Sociology, Stanford University in September 2010, further elaborates: "Strong boundaries, or what Freidson calls *market shelters*, around professions occur when professionals mobilize and create powerful associations that are able to set up licensing or credentialing criteria that limit the supply of labor (...)" Training and certification is also an effective way of creating specialization as these mechanisms create specific monopolies within professions.

The market theory is particularly convincing at the higher end of legal services. Merger and amalgamation experts, for instance, are a demand-driven specialization in law. In this area too, complexity of work and commensurate requirements of technical knowledge matter, but expertise has grown in popularity because of the demand from corporate houses for such work on a regular basis. But can we say these explanations are valid at the margins of the profession as well? After all, the legal profession is deeply divided by type of clientele (Heinz *et al.* 2005, Remus 2013). While in one hemisphere there are corporate lawyers in large settings serving large companies, in the other there are solo practitioners and small firm lawyers serving mostly individuals.

It is not clear whether the market logic is fully applicable in the case of immigration law, which has mostly individual clients, with many of them in insecure statuses in life. In this paper we turn the gaze towards legal practice situated at the margins of the profession, to further develop the reasons for specialization and implications of specialization. Marginal, here, denotes practice which may not afford high status or earnings within the general field of legal practice. Some (for example Galanter 1974) argue the status of lawyers reflects the status of their clients; so those lawyers with a less privileged client-base – legal aid lawyers, criminal defense lawyers and other specialists representing *one-shotters* – are themselves drawn from lower socio-economic classes and occupy the *lower echelons* of the legal profession (Galanter 1974, 116). Our data does not always match this conception of marginalization; the social backgrounds of our interviewee lawyers were variable and despite working with a less privileged *one-shooter* client base, interviewees came from a range of socio-economic classes. That said, they might be seen to occupy a relatively marginal position within the profession. Thus, Prabhat (2016) has argued elsewhere that lawyers may have professional socialization around their client's life situations thereby mirroring their marginal positions in society. In this sense, like Galanter, we find that marginalization is linked to client profiles of lawyers.

Many scholars agree that a further impact of specialization is the threat of fragmentation within the legal profession. Weisz (2003, p. 549) argues, specialization was seen as a divisive force in the medical profession where it encouraged even deeper institutional fragmentation. Similar fears are also expressed by Moorhead with regard to the legal profession. Moorhead (2008) notes how specialization can undermine the value of the general professional qualification by separating elites from non-elites. He cites this as a question of legitimacy, raising the issue that specialization may threaten the authority of the profession's general claim to competence: "Whilst specialists may (claim to) be the ones leading a field, developing the law and its techniques, and thus advancing the broad claims of the profession to advance the production of specialist knowledge in their client's interests, specialization also threatens the professional project as intra-professional competition and specialization intensifies". Rostain (2004, p. 150) writes that "[l]awyers have taken refuge in specialization, which has made it more difficult for lawyers as a group to identify common economic or ideological interests as a basis

for a collective agenda". The growing fragmentation of the bar has been attributed to lawyers' own entrepreneurial ingenuity. Nelson and Trubek also observe in terms of specialization in the US legal market: "(...) the cost has been the erosion of a distinctive professional tradition and the absence of centralized power within the profession capable of enforcing a particular vision of professional ideals" (in Rostain 2004, 150; see also Heinz and Laumann 1982).

Here, the professional boundary is seen as exclusionary, designed to reserve knowledge for insiders and to lock others out. Specialization, under this view, particularly where it is formalized through increased accreditation and regulation requirements, potentially "reduces the number of suppliers of legal services, makes them harder to access and, in a free market, more expensive" (Moorhead 2008, 4). Further, specialization may actually decrease the quality of service provision where it leads to greater complexity and routinization. Professionalization necessarily results in an information asymmetry between professions and their clients. Specialization, as the next step in this process, might be perceived as professional mystification, where the specialists develop complex solutions to (legal) problems which only they can validate as right or wrong, whether or not simpler solutions would be adequate or even more efficient (Moorhead 2008). On this view, specialization is a repeat of the fundamental self-referential *trick* of professionalization: knowledge developed for, and validated by, the profession's own interests not those of the consumer (Abel 1997) or as a manifestation of law's dysfunctional tendency towards complexity (Hadfield 2000).

Accompanying this is the de-professionalization thesis. Under this view, specialization is seen as socially harmful to those who practice it because of an association between specialization, routinization and the squeezing out of creativity and professional skill (Stefancic and Delgado 2005, 10). Lawyers, often operating under tight economic constraints, are drawn to routinization: responding to the needs of clients in the most efficient manner possible. The effect of this is the loss of deeper reflection on the complexity and nuances of client problems, and a potential *de-skilling* of lawyers where law firms become increasingly like factories of technocrats (Sommerlad 2001).

Further, although specialization may facilitate greater depth of knowledge, this is narrower and less comprehensive. Specialists may fail to see the bigger picture; their knowledge may lack breadth and preclude holistic treatment of clients' problems. Specialists may diagnose problems so that they fit their specialist expertise rather than fit with the client's broader needs for a solution. Specialization also has the potential to be detrimental to the *ethical sense* of the profession. It is claimed that specialization has advanced alongside a decline in lawyer autonomy (Kronman 1993, Heinz *et al.* 2005, 12). In this context, the distributional impact, or unevenness, of specialization is important: as commercial lawyers are bigger, more specialized, wealthier, and have higher status, they are seen as dominating professional judgments on what is honoured by practitioners. This relates back to the point made in the previous section, that specialization can have the effect of crystallizing hierarchies. Specialist hierarchies – with their implied technical and meritocratic claims – then come to replicate social hierarchies (Heinz *et al.* 2005, p. 293), reinforcing the power of elites – in this case elite firms within the profession and powerful partners within the firms.

The result of increasing specialization is many lawyers become ensconced within their own practice area, being members of specialist organizations rather than more generalist ones, which, some argue, can have a negative long-term effect on the cohesiveness of the profession as a whole (Moorhead 2008 and Parker, dissertation thesis, 2010). While stratification has enabled the profession to maintain, in its elites, traditional forms of social closure, specialization itself poses distinct threats to the ideological claim of a common professional bond, suggested by a uniform qualification. Specialist communities within professions may deepen their ties with each other, while the profession as a whole has less common-interest and

engagement (Heinz *et al.* 2005, pp. 318–319), prompting fears that professions lack coherence or are “more diverse and less integrated” (Heinz *et al.* 2005, p. 8). Taken together, existing literature highlights several concerns about specialization in legal practice. In the next section we shall see to what extent this resonates in the specific area of immigration law.

## 6. Immigration Law as Specialization

As we have seen, the wider literature on professions and organizations records how specialization takes place through specific pathways driven by the market or functional needs. The emergence of a specialization is generally seen as part of a larger process of constructing boundaries around areas of work. To characterize immigration practice as a specialist area, we look at whether it satisfies what are seen as defining features of specialization. For example, Döhler (1992, p. 19), while writing about the medical profession, finds that the following features of specialization exist: formal training requirements for full speciality status, separation between specialists and general practitioners, limitation of practice, and specialist status restricted to hospital positions.

While these features of specialization may appear to be very specific to the medical profession, we argue that features of specialization can be found across professions. Thus, a leading medical journal listed the medical specialties of the times: some are based on organs treated (such as eye, ear, or chest) and others are specific populations: birthing women, children, the insane; while others are therapeutic techniques: spa medicine, hernia surgery; and yet others on state needs: public health, forensic medicine, and paediatrics (Weisz 2003, p. 545). Strauss *et al.* (1981, p. 37) see psychiatry as an example of how specialism can be divided on issues of methodology and technique. The defining elements of specialisms here are specific journals, different professional associations, and affiliations to corresponding teaching associations. Also, any professional specialism contains within it several groupings of specialists who have different interests or foci of concern. These different values represent sub-specialities, and are often identifiable through institutions that promote their own special causes and concerns (Strauss *et al.* 1981). Specialization within the legal profession is also similarly patterned (Heinz *et al.* 2005, p. 37).

Immigration law demonstrates an area of similar construction of boundaries in general legal practice. Immigration law is largely a marginal specialization, although there are some elite aspects to it (for example, business immigration and corporate employment visas). Most immigration practice is marginal in terms of lack of recognition from the rest of the profession, low prestige of practitioners, location within high-street firms rather than in big corporate presence, lower earnings of practitioners and their precarious positions (such as dependency on legal aid). Surprisingly, just some decades back this was not a distinct area of legal practice. It is only in the late 80s and early 90s that specialist immigration law training became common. This was linked to the development of the immigration appeals process and the increasing juridification of immigration tribunals. In previous times, immigration work formed part of general civil or criminal practice and was treated as a matter associated with work, family, or crime rather than as a standalone subject. But, gradually, it took on some identifiable features of specialization, such as a distinct set of expert knowledge, a wide membership, and institutional structure to administer and regulate the membership body. Now, in the UK, a large number of practitioners self-identify, or are identified by peers, as immigration law practitioners. Immigration has its own national membership-based organization, the Immigration Law Practitioners' Association (ILPA), founded in 1984. ILPA today has some 1,000 members (individuals and organizations), who are barristers, solicitors, and advocates practising in all aspects of immigration, asylum, and nationality law. Academics, non-governmental organizations, and others working in this field are also members.

One lawyer we spoke to, a longstanding leader in this field, offered their insight as to the process of establishing ILPA:

I think there was a feeling that immigration law was developing as a specialist discipline, and that came from all over – that came from business immigration as well. So previously it would just have (...) well, it sat awkwardly because some of the asylum stuff would have sat as administrative law, but the business stuff tended to be a subset of employment, human resources, and I think they felt a bit unimportant. So the JCWI [Joint Council for the Welfare of Immigrants] already existed and there was some feeling that that should be quite sufficient, that there was no need to have a separate organisation. [But] I think the lawyers felt there was a need for a lawyers' organisation.

An indicator of knowledge boundaries is the creation of technical publications accessible to specialists. ILPA has its own specialist journal: the *Journal of Immigration, Asylum and Nationality Law*, which is targeted at both academics and practitioners. A small number of other journals also specialize in immigration law, such as the *European Journal of Migration and Law*, and the *Georgetown Immigration Law Journal*. There are a number of interdisciplinary journals concerned with citizenship, migration, and nationality more generally, including the *Journal of Ethnic and Migration Studies*, the *Journal of Identity and Migration Studies*, the *Journal of Migration and Culture*, the *Forced Migration Review*, *International Migration*, *Citizenship Studies*, and the *Journal of Citizenship and Globalisation Studies*. International journals listed here are also influential in the UK academic field because domestic academic debates (particularly in migration and immigration) are often supported by examples from all over the world. These journals are read by academics, students and practitioners, and as such their content contributes to setting the disciplinary boundaries within which knowledge is produced and disseminated through teaching and practice in the UK.

Another indication of specialist knowledge is the prevalence of training programmes. Immigration and nationality law have their own distinct training trajectory. Specialist training programmes on citizenship and nationality law are run by ILPA for practitioners who receive Continuing Professional Development points for participation. Immigration law is also offered as a subject in several universities and law colleges in England, although it is not a core module on the undergraduate law degrees (LLB, Bachelor of Laws, or QLD, a Qualifying Law Degree) curriculum. It is taught as an optional module at a number of universities at undergraduate and postgraduate level, including at the Universities of Bristol, Kent, Exeter, City, SOAS, Plymouth, Queen Mary, Kingston, Middlesex, Surrey, and Kings College London. Some university law clinics, such as Liverpool and Kent, also help fill resource gaps in immigration law. There are regular conferences and training programmes in immigration law. In the academic sphere, too, there has been a steady increase in immigration law-related research and teaching in England. The number of Chairs in the area of Immigration Law or Migration studies cannot be readily ascertained, as Professorships are not often listed under specific sub-areas of law. However, there is a community of recognized leading scholars in the field, including Bernard Ryan (Professor of Migration Law at Leicester University), Daniel Wilsher (Professor in Law at The City Law School), Elspeth Guild (Jean Monnet Professor ad personam at Queen Mary, University of London and Professor of European Immigration Law at Radboud University Nijmegen), Robert Thomas (Professor of Public Law with research interests in immigration law), and Jo Shaw (Salvesen Chair of European Institutions at University of Edinburgh).

These examples point towards some of the distinctive features of specialization within the legal profession: such as formalization of knowledge (through courses and training), and the creation of distinct means of dissemination of knowledge, as well as its replication through well-established journals and conferences. Thus, in law, as in medicine and psychiatry, professional organizations, journals, training

programmes, accreditation schemes, and formal and informal professional networks serve as signifiers of specialization.

## 7. Why Lawyers Specialize

We have already observed that at the macro level specialization may be driven by functional needs or market demands. Our data produces some micro level insights into individual motivations for specialization. Individual lawyers specialize through areas of law, types of client, or levels of jurisdiction for a number of reasons - usually a mix of choice, reputation, and happenstance. Some are drawn towards immigration practice because of its association with asylum and refugee law. Such lawyers may be passionate about working in this area of social justice, or for certain kinds of asylum cases (for example defined by ethnicity or gender of the client). They may see themselves in more *oppositional* terms to the state and (like other cause lawyers) are more *activist* in orientation (for more on cause lawyers in UK see Boon 2004, 2010). When a junior lawyer joins a firm they are not necessarily in control of their workflow, but over time they may become more specialist in a certain area (Maclean and Eekelaar 2009, p. 17). Thus, most of our interviewees explain that they joined the legal profession as general practitioners with a wide variety of cases in their portfolio. They gradually gravitated towards immigration law as a specialist area through acquiring expertise in the legislation, rules and guidance, and simultaneously gaining a reputation for immigration work. One of our interviewees inherited the practice from a senior lawyer in whose office he took on immigration work when he first joined as a new graduate. Several mentioned geographical links and language skills as reasons for immigration work becoming their specialization, often by default. One of our interviewees, being himself an immigrant and with family connections in the practice of law, considered immigration law his only viable option. A few interviewees discussed filling the gaps according to the legal needs of their communities. Specialization can also occur by default, as this lawyer suggests: "There are individuals who do it in firms. It tends to be (...) everyone's always on the lookout for the person who likes nationality to dump the nationality casework on. And then you get someone who acquires an interest".

Although we do not focus on corporate work, some of our research participants work for skilled migrants as well; engaging in high-end corporate immigration work. These lawyers generally started out in immigration departments of large, mixed-practice law firms. Immigration lawyers gave contrasting views when talking about the depth of specialization in nationality matters. For example, a high-end corporate immigration lawyer explains how the difficulty inherent in immigration work requires in-depth knowledge and experience – "it becomes completely difficult to challenge any of this or to find out (...). And usually clients also have some lack of documents or some sort of track record which makes it difficult to challenge their cases and bring those forward. So it is very challenging to do this work". To the contrary, another interviewee viewed immigration work as mostly routine and rarely requiring specialist knowledge.

These contrasting views may be explained by the different kinds of immigration and nationality cases in which lawyers specialize. Some lawyers do immigration and nationality work alongside other practice; they do the more routine work but do not tend to engage in complicated cases. More difficult cases are generally steered in the direction of the few core specialists who have built up in-depth knowledge and expertise. One participant explains:

Specialist nationality immigration law most people are very frightened of it. Increasingly solicitors (...) once you pick it up (...) because it isn't actually difficult, it's technical, it's fiddly rather than hard. You have to comb through a lot of statutes, a lot of documents, join a lot of (...) but it's not difficult, it's not conceptually particularly difficult, I don't think. So I think once people get over the fear factor, they realise they can do it, it actually just involves a lot of sitting down and concentrating.

This interviewee noted how the core group of nationality specialists was “very tiny”, citing just a handful of names. By contrast, she noted how many generalist immigration lawyers would engage in sectors of nationality law which were seen as more routine, because this was a necessary part of other immigration work – “everyone would do naturalisation – that’s if you do immigration law, everyone will do some registration, if only of the children of those who are naturalising”. Furthermore, there exist other sub-divisions within immigration and nationality work, for example, a “national security cohort” of lawyers. Engagement with different sub-specialisms was seen as a necessary part of legal work owing to the complex nature of legal problems.

## 8. Nationality Law Practice

In the above section, we have characterized immigration law as a specialization. In our data nationality law emerges as a sub-area of practice within the field of immigration law. We now turn to a more in-depth analysis of nationality legal practice. After the Brexit referendum of 23 June 2016 there has been a recent spate of applications for citizenship of various countries as well as a spike in applications for British nationality from long-term EEA residents in the UK. Most immigration law practitioners whom we interviewed as part of an ongoing ESRC-funded research project on British citizenship spoke of a surge in nationality-related work in their portfolios. Particularly, the confusion about the legal status of EEA nationals present for long periods in the UK (at the time of writing) in the context of Brexit has resulted in a surge of nationality applications as well as applications for permanent residence in UK. Nationality work includes determining potential eligibility of applicants for permanent residence/ indefinite leave and citizenship, understanding the implications on free movement, and researching foreign nationality laws that may apply to clients. Work of this nature generally involves complex rules and sources of law from different jurisdictions and draws on the ability to track a trail of evidence rendered hazy by the lapse of time.

Nationality law practice is closely linked with general immigration law practice. Most nationality lawyers are also specialists in immigration law, including other areas of expertise such as asylum and refugee law. Many lawyers also retain other practice areas, such as labour law, family law, benefits law, housing law, anti-discrimination, and judicial review. Just over half of entries in the ILPA online directory are listed as covering nationality work (189 out of 355 entries). Other areas of work covered are immigration, asylum, European, business immigration (individuals and companies), Judicial Review, family, detention, and deportation. Thus we can see how a sizeable proportion of immigration practitioners claim to do nationality work.

Most of the barristers and solicitors who practice in these areas are located in urban areas and practice in small chambers, as solo practitioners, or as part of small law firms of fewer than five practitioners. According to the ILPA online registry, 107 of the 189 nationality listings are located in London, with a further 23 in the wider South East, which leaves very few members situated across the rest of the UK (for example, only two in Wales and eight in the South West of England). A high proportion of those carrying out nationality law practice are not listed as solicitors or barristers, instead they are either accredited by the Office of the Immigration Services Commissioner (so they may be non-lawyers, or lawyers without full practising certificates) or operate in the not-for-profit sector. In the online ILPA nationality listings there are 47 Office of the Immigration Services Commissioner (OISC) firms, six law centres, 11 not-for-profit advice organizations, and one Citizens Advice Bureau. These organizations may have solicitors working for them, or volunteering, or some organizations may only do very basic immigration work not requiring oversight from a solicitor. This highlights the significance of a variety of trained personnel to the development of this sub-specialism. However, as mentioned above, specialization occurs on a sliding scale, with some lawyers doing more routine, basic work, and relatively few who are recognized within the field as competent to conduct more

complex cases. This was also borne out in our interviews. For instance, a well-known immigration lawyer said:

I think maybe in large firms there will be different lawyers in immigration departments focusing on different aspects. For example, nationality. I think, in a high-street practice, I think you will do a variety of different things and nationality law or matters involving a nationality component. So I think it is quite specialist but I think most (...) the types of things you get in a high-street practice are quite straightforward usually. It's more someone coming along and saying, 'I've been here for 10 years and I want to apply for citizenship', and it's basically looking at what one needs to do to get naturalisation, and it's simply completing a form and sending off documents, so it's not specialist but there are difficulties and complexities that arise as a result of people's idiosyncratic personal circumstances.

This view was echoed by other practitioners, who agreed that most immigration lawyers should have basic grounding in nationality law, but only very few lawyers – the true specialists – possess the experience and knowledge to see difficult cases through.

Another immigration lawyer with a variety of clients says:

In most cases, really, every immigration lawyer should be able to advise on the basic rules, the sort of 'born here 10 years' discretionary rule. For adults, the 'five years lawful residence' or three if you're married to a British citizen, etc. They should all know that. I used to do the more complicated nationality work where you're looking at somebody in their 60s who last held a British Subject passport back in 1950 something and has been in the UK for, like, 30 odd years and they're the really complicated ones that you kind of have to sit down and sweat out what the rules are and whether they became a national in their own country, independence – yes or no. So that's very specialist work. I haven't done any of that since it disappeared from Legal Aid. It's actually quite expensive in terms of man hours. But certainly every immigration lawyer should be able to advise on the basic rules.

This lawyer's view is largely representative of how nationality lawyers often see specialization as driven by both availability of funding and the complexity of legal rules and regulations, which are subject to constant updates and revisions. As another lawyer told us "nationality law is a nightmare!" The lawyers who recognize the need to master this ever-changing and expanding knowledge base are the ones that then become seen as experts, and leaders, of the field. Their technical skills and in-depth knowledge are recognized by others, and a prestigious, if marginal, position in the wider immigration field is achieved. Lawyers often cited the same few names as those "core" specialists to whom they would refer hard cases.

Those working in nationality law often find specialization has occurred through reputation, owing to the way in which legal work is distributed in the UK. Spiegel (1979) writes that information disparities between lawyer and client mean that market regulation effects do not fully operate between lawyers and clients. Clients do not have complete freedom in terms of who they choose as their lawyer, and lawyers are also not completely free to pick and choose their caseload. In England, under what is known as the *cab rank rule*, barristers are not permitted to refuse a case in the area of law in which they claim expertise. Historically, this principle was used to protect against unpopular clients or causes being refused representation however. Law clerks generally play a key role in determining who gets which brief in chambers (for in depth discussion of the role of clerks in specialization, see Flood 1983). However, reputations are important in terms of solicitors choosing which set of barristers' chambers to approach, and often solicitors will ask for a particular barrister. Lawyers then, rather than clients, have strong views about the competence and capability of their colleagues for dealing with different issues, and reputation is of paramount importance. Referrals from colleagues and collaboration with them are a key part of specialization. Getting adequately paid work is, however, a real challenge as it is scarce in a field where most clients are precariously placed. This means competition is also intense for taking up paid work when it comes along.

## 9. Impacts of Specialization

Now that we have looked at the features of specialization, what are some of the implications of specialization? In other words, why does it matter if specialization occurs? The answer is closely linked to the causal forces for and motivations behind specialization. Moorhead (2008) highlights the primary issue behind specialization as that of supply or demand. The supply–demand question asks if specialization is a symptom of external, client-driven demand, or does it operate to drive, define, or even manufacture, that demand? The causal link between growth and specialization, and what lies beneath it, is important. If specialization leads to growth in the profession, is this driven by client needs for better, more efficient services, or is specialization a process through which the profession manufactures the new, more detailed, and more expensive services which drive its expansion? In other words, is specialization a process of mystification, which delivers significant benefits to the profession at the expense of consumers? Or is specialization a response to larger commercial forces, which need and benefit from ever more expensive and extensive legal services? We argue that it need not be one or the other and is instead a contingent matter that should be evaluated contextually. Contextual analysis would include the changing organizational environment as well as the macro-level political and legal complexity.

An important feature of immigration law is that successive governments attempt to *tighten up* rules and make immigration more difficult and immigration law practice more complex. Our interviewees are constantly challenged by the changing rules and the creation of specialist spaces for litigation (such as the Special Immigration Appeals Commission, SIAC). For instance, one Bristol based practitioner says: “Is there any other field of law where we see an entirely new statutory framework come into existence every year. Not to mention the immigration rules. The case law from the tribunal, the other courts. Take for instance, the SIAC; it is not somewhere I practice (...). [I]t [SIAC] is a specialist area as you need to know its very specific rules such as on evidence”. However, constant change presents both difficulties as well as opportunities for practitioners to specialize in niche areas of knowledge and specific sites of practice.

As we will discuss at greater length in the next section, the existence of poor practice standards is acknowledged by most of our interviewees and is also widely documented in reports and case law. Most acknowledge that a positive effect of specialization would be reduction of poor legal practice through requirements of additional qualifications and accreditation. Market control literature, however, does not present specialization as a response to improving standards. Instead, it suggests that professions employ their monopoly of expertise to reduce competition. Monopoly over knowledge by a select few operates to the detriment of consumers, as it reduces their choice of available practitioners offering services at affordable prices (Parker, dissertation thesis, 2010). Thus, specialization inhibits competition within the profession. Indeed, many of our interviewees who are solo practitioners or work in small firm are wary of specialist larger immigration services. The feeling that “[t]hey charge a lot of money. Attract people. But to do what?”, was a typical sentiment expressed by interviewees. Clients who access specialist firms charging premium rates gave mixed feedback. One professional who used a large employment immigration firm found their advice “[s]imply wrong. They are not used to complex cases and can only do straightforward cases. In my situation, I was out of the country on my employer’s work and they could not find me the case law on this which still placed me within required days”. Whereas, another client-interviewee who accessed a firm which specializes in cases from her part of Africa says: “They are the best. No cheating involved. Yes, they charge you but you get the best service. Why get ripped off by those who do not know what they do”. This variance indicates that specialization may at least in some instances enhance service quality, but appears to always increase costs for clients who seek high end immigration services. At least for the Africa specialist firm an alternative perspective seems applicable. By geographical



specialization these firms may be finding the best available means of managing the provision of complex services to a select group of clientele.

As already mentioned, the market theories generally explain better the conduct of elite/high-end legal services sector rather than the low-end services sector. Some practitioners who chose to specialise on services for poorer clients appear not to do so for market reasons at all, but more out of a civic obligation or out of a pro-social justice orientation. The split between those who observe specialization driven by the supply-side, and those who understand the specialization as a response to an emerging social need, can be linked to different role perceptions. If lawyers (or doctors) are conceived of as elite players, then they are largely using specialization to reinforce their established success. They are well placed in markets to specialize when markets for legal services expand. They underline their reputation through the process of specialization (Heinz *et al.* 2001, p. 345 cited in Seron 2007, p. 583). Linked to this view is the argument that specialization is a benefit from economic growth: "[B]ecause [specialists] can utilize a particular set of knowledge more intensively when demand is higher" (Garicano and Hubbard 2003, p. 499; see also Garicano and Hubbard 2004). Efficiency drives growth and law firms' need for larger markets promotes greater specialization. Laumann and Heinz (1977) provocatively argue the core values of lawyers are economic and financial rather than justice oriented. Thus, law, and specialization within law, is predominantly a tool for business success. The concern then is that lawyers will, through specialization and other business practices, imitate their business clients so wholly as to diminish traditional, collegiate professional paradigms (Seron 2007, p. 591). This is a familiar refrain in the legal ethics' literature (e.g. Kronman 1993, Gordon 2000) and, Seron reminds us, this has also been a current running through sociological writings on law firms and their relations with corporate clients dating back to at least the 1950s (Seron 2007, p. 590 discussing C. Wright Mills 1953).

Our data indicates that most immigration lawyers are not situated in secure positions in the market. Thus market theory is not always the most relevant one for considering their motivations. We find that social justice, and striving for justice, are still relevant goals for some lawyers who work for very low monetary rewards on complex issues for poorer clients. It appears that the less cynical civic obligation view as an alternative to the market perspective is still relevant. One interview lawyer says, for instance, "I, represented, as I said, *hundreds* and *hundreds* of Ghurkhas and um, I find that quite a worthy cause, actually. And it's quite easy to do the job then. When you, when, when you *believe* in, in the cause". This view credits the emergence of specialization as a more efficient, client-friendly evolution of professionalism. Research from medical science appears to confirm that the civic obligation view of specialization has currency. Weisz (2003) re-examined the nineteenth-century origins of medical specialization to conclude that in medical science, specialization was a form of knowledge production and diffusion (Weisz 2003, p. 574). It was a response to a new collective desire to expand medical knowledge. Thus, specialization was a response to the increasing need for expertise and in-depth knowledge in the medical discipline rather than market control. We find this bears a striking resemblance to emergence of sub-specializations such as nationality law practice in immigration practice where specialization has emerged from complexity of rules.

There was also another driver of specialization in the medical profession; not only was it a mode of knowledge production, but it also allowed for better management of large populations through proper classification of patient groups (Weisz 2003, p. 538). Administrative rationality thus provided a concurrent impetus for specialization. The administrative convenience argument also has resonance in similar studies of specialization of the legal profession; for example, Reed has found that specialization often happens because of the nature of the daily work of lawyers (Reed 1974, p. 456). This was reflected in our findings; immigration lawyers also serve specific neighbourhoods, language groups or countries of origin simply because it facilitates their day to day work in terms of language skills or administrative convenience.

## 10. The Issue of Quality

The issue of quality has plagued immigration law practice for many years. Quality regulation, which leads to new rules of conduct, can generate greater specialization. For example, dissatisfaction with the quality of available legal service has led to the requirement of regulation by the Office of the Immigration Services Commissioner (OISC). Immigration advisers who are not barristers or solicitors, now have to be accredited with the OISC in order to provide advice and services on a variety of topics, such as claims for asylum, entry clearance, leave to enter or remain in the UK, employment documents, nationality and citizenship, residence, deportation, or removal bail applications and appeals against deportation. Stringent regulation makes it a criminal offence for a person to provide immigration advice or services in the UK unless they fall within specific exemptions. Since the OISC accredited advisers now advise on a large number of areas they are closely regulated. Greater specialization in immigration advice thus, in its turn, often catalyses greater regulation. So, the relationship between specialization and regulation is a bi-directional one and opens up new avenues for professional expansion.

An illustration of this process can also be found in Pollard's work on the medical profession. Pollard (1996) writes that greater regulation of who can work with deaf people has generated new opportunities for psychologists to provide much needed specialist care. Viewed as quality control, regulation then could become evidence of development in science and knowledge (Law and Kim 2004, p. 28, Seron and Silbey 2004, p. 34). Similar parallels are also evident in the legal realm. Under legal aid schemes, for example, specialist accreditation is mandatory to be able to carry out significant volumes of legal aid work. This regulation of expertise aims at ensuring high standards in service provision, while simultaneously providing the space for expert provision of this service. However, legislative changes to legal aid have changed the resource base for immigration law practice. A solicitor says: "Legal aid used to be part of my advice when I dealt with refugee status, indefinite leave, etc. – to advise people that at this point you become eligible to become British. If this is what you want to do, come and see me. We'd open a new file and we would make the application. Yeah. But LASPO [Legal Aid, Sentencing and Punishment of Offenders Act 2012] took away legal aid (...)". This is where bodies such as ILPA, emblematic of the institutionalization of nationality practice, can serve a public interest function through lobbying and campaigning against legal aid cuts.

Lack of resources at the reputational margins of the profession, has implications for the quality of representation. Many immigration lawyers operate from shabby premises and with little research help. High-street shops in many UK cities operate as mini law firms, often offering a variety of *specialist* legal services. While some of these lawyers provide convenient service to local communities, for many clients the high-street law firms are unsatisfactory. An applicant for British citizenship told us: "Their claims of competence are rubbish. I only got help once I went through organizations for young people to a specialist nationality lawyer". An interviewee lawyer agrees, "(...) Yeah, it's completely about ripping people off for these people who are doing it".

In recent cases, judges have openly rebuked immigration lawyers for inadequate assistance given to clients. For example, in the case of *Shabani, Re* [2015] EWCA Crim 1924 (22 July 2015), the Lord Chief Justice overturned the conviction of a refugee who was not properly advised on his defence to a prosecution for illegal entry. He also referred the solicitors responsible for investigation by the Solicitors Regulation Authority. In Paragraph 14 he said: "There can be little excuse for a failure to understand the law and advise properly". This applied in other cases as well such as *Re Sandbrook Solicitors* [2015] EWHC 2473 (Admin) and in *R (On the Application*

*of Akram & Anor) v Secretary of State for the Home Department [2015] EWHC 1359 (Admin)*.<sup>3</sup>

The judicial criticism directed at immigration practitioners raises questions as to the effectiveness of regulation and quality control within this area of the profession. This concern was voiced by some immigration lawyers we spoke to, like the one quoted above, who worried about poor practices from other immigration lawyers. A research report, commissioned into the quality of legal advice for asylum seekers, finds that almost half of all clients are unhappy with their solicitors (Franchi 2016). Advisers often failed to explain how the asylum process worked, were unclear on costs, used interpreters that spoke the wrong language, and lacked the relevant legal knowledge to act in their clients' best interests. Some lawyers had inadequate skills and expertise to take proper instructions from clients. This seems to reveal a contradiction between increased regulation and decreased quality. But it may also demonstrate the growing gulf between specialist practitioners (who are seen within the practice community to provide high quality advice and representation) and generalists, whose knowledge and skills are seen as less refined.

The literature demonstrates there are ample challenges that specialization may pose, particularly by restricting access and narrowing the knowledge base of lawyers. Legal services become inaccessible, particularly for those at socio-economic margins. While wealthy and educated people may be able to hire specialist lawyers, this is not true of average or marginally located applicants who are side-lined. Prabhat has interviewed several applicants of British citizenship many of whom refer to the non-availability of affordable, competent lawyers and therefore apply for citizenship through *DIY* applications (Prabhat, forthcoming 2018).

## 11. Better Service through Expertise

As we have seen from market theories, specialization is necessary to professionalism because it gives professionals a competitive edge. However, a possible benefit of specialization is that it enables the application of complicated, technical knowledge when there are difficult problems. There is much evidence to support this view when one examines the data from training workshops for immigration and nationality practitioners. One barrister interviewee told us: "Without specializing in this field it would be impossible to keep track of the applicable changes. Facts are complicated as well. Often I am a fact detective pouring into pages of family migration history and making connections with the relevant laws of the time. A general practitioner should know the broad strokes but would not know the finer details to make a case". Indeed, this evidence supports claims that professionalism as an ideology advances on its own behalf. Freidson (2001, p. 111) writes about the ideology of professionalism, "(...) [it] claims that its specialization is fitted to individual tasks rather than standardized production. It claims that the work of a trained and experienced specialist is superior to that of an amateur; in a narrower sense, it claims that the work of a specialist with professionally controlled training is both superior to and more reliable than that of someone who may have experience but lacks training". If these claims bear out, specialization can enhance the profession's "capacity to be flexible and adaptive in dealing with qualitative differences among individual tasks" (Freidson 2001, p. 111–112). Reed (1974, p. 468), speaking as a teacher of law, and positioning himself as an influencer of the legal profession, concludes in a similar vein:

We can do a better job of getting clients to lawyers who are qualified to deal with their particular problems. Also, we must develop some better way than we now have to see to it that members of the profession keep their credentials up-to-date and try to improve their skills throughout their professional lives. Finally, I hope we will not

<sup>3</sup> These kinds of cases where lawyers are not competent advisers are often referred to as *Hamid cases*, after a key case where the judiciary found fault with the quality of lawyering. See: *R (on the application of Hamid) v Secretary of State for the Home Department, [2012] EWHC 3070 (Admin)*.

be slow or reluctant to move vigorously as responsible members of that profession to help bring about these changes when they appear to be merited.

Another advantage of specialization is that it allows practitioners to satisfy their own professional needs to pursue in-depth knowledge. This view assumes that lawyers prefer specialization, because it enables them to gain more in-depth knowledge and concentrate on work, which is then both more rewarding and efficient. A nationality practitioner says that in complicated cases expertise is important:

You get (...) nationality issues where you're contacted by somebody who presents their family history, the background and especially due to where they've lived and changes to the British Empire, et cetera, people will discover, when their grandma dies, a British passport somewhere and then want your advice on whether that means they can be British. I quite like doing those because that's quite like you're sort of delving into history and working out a puzzle [but] the majority of time, the advice is negative.

Similarly, amongst practitioners we interviewed there was general agreement that in a field where quality is low and clients are vulnerable, specialization provides a more effective way to give the best possible service to clients. But for specialization to be effective in enhancing quality, it must be accompanied by knowledge-sharing, training and increasing skill capacity; all of which require understanding new developments. Increased institutionalization can help the processes of knowledge sharing, training and skill development. But specialization at the margins is generally of a precarious kind, developed through personal motivations and energy in the face of adversity (hard work and low pay). Where practitioners invest time and energy towards specialization, this can lead to developments in knowledge and innovative practices, such as seeking new avenues to regularize clients' immigration status or new means of funding registration fees (for example through mobilizing community organizations, schools and churches).

## 12. Conclusion

Market theories are inadequate for understanding the specialization of lower-status areas of legal practice. Immigration law practice, as a relatively low-status area of legal practice, is more oppositional with respect to the state than other kinds of individual client-oriented practice such as family law. It is also more bureaucratic in nature and encompasses many sub-fields. Lawyers who are placed in a marginal position in the legal profession do not always work to satisfy market demands or to generate higher incomes. Thus, market control cannot wholly explain specialization at the margins of the legal profession. Instead, administrative needs, regulation for quality control, and the complexity of new rules often lead to specialization at the margins of the profession. Serving vulnerable clients is a critical concern when resources are inadequate and lawyers at the margins struggle to meet these needs rather than striving for any recognition for their work. In such circumstances, practitioners are active participants in placing boundaries on what they can advise on, who they associate with, and what strategies they adopt to serve their clients. Being authorized to practice in circumstances when others are excluded for quality control or because of skill requirements, the practitioners acquire a *specialist* status.

We find that immigration law is a well-established specialization at the margins of the legal profession. But located within it, nationality law also provides an apt example of an emerging sub-specialization where forces of collaboration and competition over the authority of law co-exist. In the case of nationality practice lawyers have elevated their own professional position to that of *experts* in a niche area of law. Arguably, nationality law is not yet an established area of specialization of law as is the case with immigration law, family law, or criminal law, but it is often treated as a distinct body of knowledge and skills for immigration practitioners. Several lawyers in England, who belong to the Immigration Law Practitioners Association, list citizenship and nationality practice as an area of expertise and concentrate on this work in their everyday practice, even more so since the Brexit

referendum. Through this expertise they acquire new clients and enjoy an important status. Thus, through negotiating the boundaries of their work, these lawyers are able to escape the marginalization common to most other immigration lawyers.

Nevertheless, the caution remains that specialist help is hardly an unmitigated good; both the literature and empirical data demonstrate there are ample challenges that specialization may pose, particularly by restricting access and narrowing the knowledge base of lawyers. Specialization reduces access to affordable legal help by creating further monopolies over knowledge and practice. It is, thus, unlikely to be a panacea in a sector that lacks the resources (in terms of legal aid) and supply of quality legal provision (in terms of trained personnel).

In the long run, however, the picture is more hopeful; if a specialization gathers prestige it will attract greater numbers of better talented and qualified professionals. At that time, it may generate higher quality legal service for clients as well as better monetary rewards for professionals. When professionals do well themselves while serving needs of social justice, both they and their clients will be less precariously placed.

## References

- Abbott, A., 1981. Status and status strain in the professions. *American Journal of Sociology*, 86, 819–835.
- Abbott, A., 1983. Professional ethics. *American Journal of Sociology*, 88, 855–885.
- Abel, R.L., ed., 1997. *Lawyers: A Critical Reader*. New York: New Press.
- Adler, P.S., Kwon, S.W. and Heckscher, C., 2008. Perspective-professional work: The emergence of collaborative community. *Organization Science*, 19 (2), 359–376.
- Auerbach, J.S., 1976. *Unequal Justice: Lawyers and Social Change in Modern America*. Oxford University Press.
- Berlant, J.L., 1975. *Profession and Monopoly: A Study of Medicine in the United States and Great Britain*. Berkeley, CA: University of California Press.
- Boon, A., 2004. Cause lawyers and the alternative ethical paradigm: ideology and transgression. *Legal Ethics*, 7 (2), 250–268.
- Boon, A., 2010. Professionalism under the Legal Services Act 2007. *International Journal of the Legal Profession*, 17 (3), 195–232.
- Döhler, M., 1993. Comparing national patterns of medical specialization: a contribution to the theory of professions. *Social Science Information*, 32, 185–231.
- Durkheim, E., 1997/1893. *The Division of Labour in Society*. New York: The Free Press.
- Flood, J., 1983. *Barristers' Clerks: The Law's Middlemen*. Manchester University Press.
- Franchi, C., 2016. Asylum seekers let down by their lawyers, says watchdog. *The Justice Gap* [online], 20 January. Available from: <http://thejusticegap.com/2016/01/12293/> [Accessed 23 September 2016].
- Freidson, E., 1986. Les professions artistiques comme défi à l'analyse sociologique. *Revue française de sociologie*, 431–443.
- Freidson, E., 2001. *Professionalism, the Third Logic: On the Practice of Knowledge*. University of Chicago Press.
- Galanter, M., 1974. Why the 'Haves' come out ahead: speculations on the limits of legal change. *Law and Society Review*, 9 (1), 95–160.

- Garicano, L. and Hubbard, T.N., 2003. Firms' boundaries and the division of labor: Empirical strategies. *Journal of the European Economic Association*, 1 (2–3), 495–502.
- Garicano, L. and Hubbard, T.N., 2004. *Hierarchies, specialization, and the utilization of knowledge: Theory and evidence from the legal services industry* (No. w10432). Cambridge, MA: National Bureau of Economic Research.
- Gieryn, T.F., 1983. Boundary-work and the demarcation of science from non-science: Strains and interests in professional ideologies of scientists. *American sociological review*, 48 (6), 781–795.
- Gordon, R.W., 2000. Why lawyers can't just be hired guns. In: D.L. Rhode, ed., *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation*. Oxford University Press, 42–44.
- Greenwood, E., 1957. Attributes of a profession. *Social Work*, 2, 45–55.
- Gunz, H., Evans, M. and Jalland, M., 2000. Career boundaries in a "boundaryless" world. In: M.A. Peiperl et al., eds. *Career Frontiers: New Conceptions of Working Lives*. Oxford University Press, 24–53.
- Gunz, H.P. and Peiperl, M., 2007. *Handbook of Career Studies*. Thousand Oaks, CA: Sage.
- Hadfield, G.K., 2000. The price of law: How the market for lawyers distorts the justice system. *Michigan Law Review*, 98 (4), 953–1006.
- Heinz, J.P. et al., 2001. Lawyers' roles in voluntary associations: Declining social capital? *Law & Social Inquiry*, 26 (3), 597–629.
- Heinz, J.P. et al., 2005. *Urban Lawyers: The New Social Structure of the Bar*. University of Chicago Press.
- Heinz, J.P. and Laumann, E.O., 1982. *Chicago Lawyers: The Social Structure of the Bar*. New York: Russell Sage Foundation.
- Joiner, C.W., 1955. Specialization in the Law: Control It or It Will Destroy the Profession. *American Bar Association Journal*, 1105–1172.
- Kronman, A.T., 1993. *The Lost Lawyer: Failing Ideals of the Legal Profession*. Cambridge, MA: Harvard University Press.
- Lamont, M., and Molnár, V., 2002. The study of boundaries in the social sciences. *Annual review of sociology*, 28 (1), 167–195.
- Larson, M.S., 1977. The Rise of Professionalism: A Sociological Analysis. University of California: *Campus*, 233.
- Laumann, E.O. and Heinz, J.P., 1977. Specialization and prestige in the legal profession: The structure of deference. *American Bar Foundation Research Journal*, 2 (1), 155–216.
- Law, M.T. and Kim, S., 2004. Specialization and Regulation: The Rise of Professionals and the Emergence of Occupational Licensing Regulation. *The National Bureau of Economic Research. Working Paper No. 10467* [online]. Available from: <http://www.nber.org/papers/w10467> [Accessed 23 October 2017].
- Macleane, M. and Eekelaar, J., 2009. *Family Law Advocacy: How Barristers Help the Victims of Family Failure*. Oxford: Bloomsbury-Hart.
- Mashburn, A.R., 1993. Professionalism as class ideology: Civility codes and bar hierarchy. *Valparaiso University Law Review*, 28, 657.
- Moorhead, R., 2008. Lawyer Specialisation – Managing the Professional Paradox. *Cardiff Law School Research Papers*, 5.

- Oliver, A.L. and Montgomery, K., 2005. Toward the construction of a profession's boundaries: Creating a networking agenda. *Human relations*, 58 (9), 1167-1184.
- Pettigrew, A.M., 1973. Occupational specialization as an emergent process. *The Sociological Review*, 21 (2), 255-278.
- Pollard Jr, R.Q., 1996. Professional psychology and deaf people: The emergence of a discipline. *American Psychologist*, 51 (4), 389.
- Prabhat, D., forthcoming 2018. *Britishness, Belonging and Citizenship: Experiencing Nationality Law*. Bristol: Policy Press.
- Prabhat, D., 2016. *Unleashing the Force of Law: Legal Mobilization, National Security, and Basic Freedoms*. London: Palgrave.
- Reed, J.W., 1974. Specialization, certification, and exclusion in the Law profession. *Oklahoma Law Review*, 27, 456-468.
- Remus, D., 2013. Hemispheres Apart: A Profession Connected. *Fordham Law Review*, 82, 2665.
- Rostain, T., 2004. Professional power: Lawyers and the constitution of professional authority. In: A. Sarat, ed., *The Blackwell Companion to Law and Society*. Malden, MA: Blackwell, 146-169.
- Sandefur, R.L., 2001. Work and honor in the law: Prestige and the division of lawyers' labor. *American Sociological Review*, 382-403.
- Seron, C. and Silbey, S., 2004. Profession, science and culture: An emergent canon of law and society research. In: A. Sarat, ed., *The Blackwell Companion to Law and Society*. Malden, MA: Blackwell, 30-59.
- Seron, C., 2007. *The status of legal professionalism at the close of the twentieth century: Chicago lawyers and urban lawyers*. Law & Social Inquiry, 32 (2), 581-607.
- Sommerlad, H., 2001. *Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism*. W.G. Hart 2001 Legal Workshop.
- Spiegel, M., 1979. Lawyering and client decisionmaking: Informed consent and the legal profession. *University of Pennsylvania Law Review*, 128 (1), 41-140.
- Stefancic, J. and Delgado, R., 2005. *How Lawyers Lose Their Way: A Profession Fails its Creative Minds*. Durham, NC: Duke University Press.
- Strauss, A. et al., 1981. *Psychiatric Ideologies and Institutions*. New Brunswick, NJ: Transaction.
- Weeden, K.A., 2002. Why do some occupations pay more than others? Social closure and earnings inequality in the United States 1. *American Journal of Sociology*, 108 (1), 55-101.
- Weisz, G., 2003. The emergence of medical specialization in the nineteenth century. *Bulletin of the History of Medicine*, 77 (3), 536-574.
- White, W., 2000. The history of recovered people as wounded healers: II. The era of professionalization and specialization. *Alcoholism Treatment Quarterly*, 18 (2), 1-25.

#### *Case law*

- Shabani, Re [2015] EWCA Crim 1924 (22 July 2015).*
- R (on the application of Hamid) v Secretary of State for the Home Department*, [2012] EWHC 3070 (Admin).

*Re Sandbrook Solicitors [2015] EWHC 2473 (Admin).*

*R (On the Application of Akram & Anor) v Secretary of State for the Home  
Department [2015] EWHC 1359 (Admin).*